

DOCUMENT RESUME

02080 - [A1232212]

[Allegation That Agency Acted Improperly in Terminating Contract and Resoliciting Requirement Is Without Merit]. B-187472. April 27, 1977. 2 pp.

Decision re: KeppCo; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -

Procurement & Contracts (058).

Organization Concerned: Department of the Army: Army Missile

Command, Redstone Arsenal, AL; Systems Service Corp.

Authority: B-187086 (1977). B-184365 (1975).

The award of an Army vibration test equipment maintenance contract was protested on the basis that the Army's determination of technically unacceptable personnel was in error. The allegation that the agency acted improperly was without merit. A claim for proposal preparation cost was denied because the claimant was unable to show bad faith or arbitrary or capricious actions. (BRS)

02080

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Edward Wirtanen
Proc. I

FILE: B-187472

DATE: April 27, 1977

MATTER OF: KeppCo

DIGEST:

1. Allegation that agency acted improperly in terminating contract and resoliciting requirement is without merit since once agency discovered irregularity in evaluation under initial solicitation only course of action open to agency was termination of contract award under initial solicitation and resolicitation of requirement.
2. Where claimant is unable to show that actions of agency toward claimant were in bad faith, arbitrary, or capricious, claim for proposal preparation cost is denied.

Request for Proposals (RFP) No. DAAH03-76-R-0105 issued on July 8, 1976 by the U.S. Army Missile Command, Redstone Arsenal, Alabama (Army) solicited offers for the maintenance of vibration test equipment. KeppCo submitted the second lowest of the three offers received. However, that firm and one other were found to be technically unacceptable. Contract No. DAAH03-76-C-0193 was awarded to Systems Service Corporation (Systems) on September 10, 1976 as the sole qualified offeror.

KeppCo protested the award of the contract to Systems, alleging that the Army's determination that its personnel did not have the required experience was in error because KeppCo proposed to use personnel who had previously performed the same services for the Government under previous contracts.

After a review of the procurement, the contracting officer discovered several ambiguities in the evaluation factors contained in the RFP. Specifically, he found that personnel experience requirements were considered too "loose" and were not made more precise during negotiations. Since the contracting officer determined that KeppCo's allegation of error had merit in that the ambiguities in the RFP affected the evaluation it was decided to terminate System's contract for the convenience of the Government and resolicit the remaining requirements using more definitive criteria.

B-187472


The requirement was resolicited under RFP No. DAAH03-77-R-0019 which was issued on December 6, 1976 to five prospective offerors including KeppCo. However, KeppCo did not submit a proposal. Contract No. DAAH03-77-C-0039 was awarded to Systems as the low acceptable offeror.

KeppCo claims that it is entitled to the contract because under a proper evaluation conducted under the original RFP it would have received the award. The protester contends that there was no reason to issue a new RFP because the defect in the original award stemmed from the evaluation made by the Government and not from anything inherent in the solicitation.

We cannot sustain the protester's contention. KeppCo's proposal was found to be technically unacceptable. Whether KeppCo would have eventually received the award under a proper evaluation remains a matter of speculation. Under these circumstances we believe that the only course of action open to the agency once the irregularity was discovered was to terminate the existing contract and resolicit the requirement. See Poli-Com, Inc., B-187086, March 10, 1977, 77-1 CPD ____.

In the alternative, KeppCo requests reimbursement for costs incurred by it in submitting its proposal. Proposal preparation costs are not recoverable by an offeror unless it can be shown that the actions of the procurement agency toward the claimant were in bad faith, arbitrary or capricious. See Maxwell Laboratories, Inc., B-184369, December 12, 1975, 75-2 CPD 390 and cases cited therein. In the present case we have not found that the Government's action was arbitrary, capricious, or in bad faith.

For the foregoing reasons, the protest and claim for costs incurred must be denied.


Deputy Comptroller General
of the United States